

Instruction

NUMBER 4715.6

April 24, 1996

SUBJECT: Environmental Compliance

References: (a) DoD Instruction 4120.14, "Environmental Pollution Prevention, Control and Abatement," August 30, 1977 (hereby canceled)
(b) DoD Directive 4715.1, "Environmental Security," February 24, 1996
(c) DoD 5025.1-M, "DoD Directives System Procedures," August 1994, authorized by DoD Directive 5025.1, June 24, 1994
(d) Title 33, United States Code
(e) through (n), see enclosure 1

A. PURPOSE

This Instruction:

1. Replaces reference (a).
2. Implements policy, assigns responsibility, and prescribes procedures as established under reference (b) for achieving compliance with applicable Executive Orders (E.O.s) and Federal, State, inter-state, regional, and local statutory and regulatory environmental requirements.
3. Designates "the DoD Executive Agents" to lead DoD implementation of key environmental issues, as specified in enclosure 2.
4. Implements policy for reporting, programming, and planning environmental compliance costs.
5. Authorizes the publication of DoD 4715.6-R, consistent with DoD 5025.1-M, 33 U.S.C. 1322, and 40 CFR 140, references (c) through (e).
6. Authorizes the publication of DoD 4715.6-R-1, consistent with reference (c) and 33 U.S.C. 1901-1911 (reference (d)).
7. Authorizes the publication of DoD 4715.6-M for low-level radioactive waste disposal, consistent with reference (c).

B. APPLICABILITY AND SCOPE

This Instruction:

1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities, including any other

integral DoD organizational entity or instrumentality established to perform a governmental function (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps. This Instruction does not apply to the civil works function of the Department of the Army.

2. Applies to all DoD operations, activities, and installations in the United States, its territories, trusts, and possessions, including Government-owned and contractor-operated facilities. Overseas compliance issues are addressed in DoD Instruction 4715.5 (reference (f)).

3. With the exception of the authorization in subsections A.5. and A.6. above, does not apply to the operations of U.S. military vessels, to the operations of U.S. military aircraft, or to off-installation operational and training deployments. Such excepted operations and deployments shall be conducted in accordance with other DoD Directives and DoD Instructions and environmental annexes (i.e., Joint Publication 4-04 reference (g)) incorporated into operation plans or operation orders.

4. Applies to, but is not limited to, compliance with Clean Air Act (42 U.S.C. 7401-7671(q)), Federal Water Pollution Control Act (33 U.S.C. 1251-1387), Safe Drinking Water Act (42 U.S.C. 300(f)-300(j)26), Resource Conservation and Recovery Act (42 U.S.C. 6901-6992(k)) and Toxic Substances Control Act (15 U.S.C. 2601-2692), in references (d), (h), and (i). Generally, compliance requirements for the "Comprehensive Environmental Response, Compensation and Liability Act of 1980" (42 U.S.C. 9601-9675, reference (i)), or the areas of conservation, pollution prevention, or safety and occupational health are not included.

5. Does not apply to facilities and activities governed by E.O. 12344 and conducted under 42 U.S.C. 7158 references (i) and (j)).

C. DEFINITIONS

Terms used in this Instruction are defined in enclosure 3.

D. POLICY

It is DoD policy to:

1. Ensure that environmental programs achieve, maintain, and monitor compliance with all applicable E.O.s and Federal, State, inter-state, regional, and local statutory and regulatory requirements, both substantive and procedural (hereafter referred to collectively as "environmental requirements"). That also includes compliance with requirements in statutorily mandated or authorized documents such as permits, judicial decrees, or consent or compliance agreements that seek to preserve, protect, or enhance human health and/or the environment.

2. Reduce compliance costs and simplify requirements to the extent possible. Pollution prevention is the preferred means for attaining compliance. Additional pollution prevention guidance

is in DoD Instruction 4715.4 (reference (k)).

3. Plan, program, and budget to achieve, maintain, and monitor compliance with applicable environmental requirements. The DoD Components shall fund all requirements (based on the "environmental quality status" classes defined in enclosure 3) in Classes 0, I, and II consistent with timely execution to meet future deadlines. Compliance includes all activities and projects that utilize end of pipe treatment or disposal methods to meet applicable environmental requirements. Compliance-type requirements that are satisfied by source reduction (pollutant elimination or reduction), pollutant minimization, or recycling approaches are pollution prevention requirements and shall be funded as "pollution prevention."

4. Use supplemental environmental projects, preferably pollution prevention, to offset fines and penalties, where appropriate and allowed by fiscal law.

5. Use cooperative solutions to provide needed environmental facilities or services (e.g., waste storage and disposal facilities, solid waste collection and disposal services, and water or wastewater treatment works) where economically advantageous and consistent with mission requirements. Shared solutions may be with other DoD installations or facilities, other Agencies, or public and private entities (consistent with 10 U.S.C. 2692, reference (1)). That can include transfer of ownership through contractual agreements to municipal or private sources to provide such services.

6. Participate in the development of Federal, State, and local plans and programs for achieving, maintaining, and enhancing environmental quality (e. g., watershed protection and management plans, and air quality implementation plans).

7. Pay reasonable fees or service charges to State and local governments for compliance costs or activities except where such fees are:

- a. Discriminatory in either application or effect;
- b. Used for a service denied to a Federal Agency;
- c. Assessed under a statute in which the Federal sovereign immunity has not been unambiguously waived;
- d. Disproportionate to the intended service or use; or
- e. Determined to be a State or local tax.

(The legality of all fees shall be evaluated by appropriate legal counsel.)

8. Use commercially proven solutions, including available technology, to achieve, maintain, and monitor compliance, where possible. Promote the development and use of innovative solutions for the prevention of pollutants, where economically advantageous and consistent with mission requirements.

9. Conduct internal and external compliance self assessments at installations. Expeditionously, report all information required by applicable statutes, regulations, permits, orders, and agreements. Promptly correct any environmental violations discovered and appropriately remedy any harm done.

10. Prohibit the use of DoD installations for the storage or disposal of non-DoD owned toxic or hazardous materials, as per 10 U.S. C. 2692 (reference (1)). The storage and disposal of non-DoD owned toxic or hazardous material reported or discovered in areas outside of DoD installations are primarily the responsibilities of civil authorities. Exceptions to that policy are in 10 U.S.C. 2692 (reference (1)).

E. RESPONSIBILITIES

1. The Deputy Under Secretary of Defense for Environmental Security shall:

- a. Implement policy in DoD Directive 4715.1 (reference (b)) and provide guidance, oversight, advocacy, and representation for environmental security compliance programs.
- b. Develop and promulgate environmental security compliance goals and objectives. Approve the means of measurement, in coordination with the DoD Components, for attaining those goals and objectives.
- c. Establish environmental security compliance requirements and priorities, in coordination with the DoD Components, for use in the DoD Component's environmental security planning.
- d. Monitor compliance with this Instruction, including use of appropriate measures of merit (MoM) (enclosure 4) and periodic review of the DoD Component compliance programs.
- e. Coordinate with other Federal Agencies on environmental security compliance matters of U.S. concern, unless otherwise delegated.
- f. Coordinate policies of the DoD Components.
- g. In coordination with the DoD Components, designate and oversee a Military Service or a Defense Agency as the lead or "the DoD Executive Agent" for specific environmental compliance-related issues or areas. Designated DoD Executive Agents are in enclosure 2.

2. The Secretaries of the Military Departments and, as appropriate, the Heads of the Other DoD Components, shall:

- a. Ensure compliance with this Instruction. Tenant activity commanders shall work cooperatively with the host installation, to comply with this Instruction.
- b. Implement programs to achieve, maintain, and monitor

compliance with applicable environmental requirements.

c. Plan, program, and budget for environmental requirements that are necessary to prevent, control, and abate pollution.

d. Carry out the responsibilities of a lead or DoD Executive Agent for specific environmental compliance-related areas when designated by Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)) under paragraph E.1.g., above. The lead or DoD Executive Agent shall:

- (1) Develop a Charter outlining functions and responsibilities, to be approved by the DUSD(ES) and coordinated with the DoD Components.
 - (2) Report as appropriate, but at a minimum semi-annually, to the appropriate Defense Environmental Security Council (DESC) Committee.
 - (3) Ensure that all policy issues and the commitment of resources are approved by the appropriate DoD Component and OSD chain of command.
 - (4) In coordination with the DoD Components, commit resources and adopt policies that support the DoD Executive Agents' responsibilities.
 - (5) Coordinate and cooperate with the other DoD Components as well as Federal and State regulators, as in DoD Instruction 4715.2 (reference (m)).
- e. Coordinate with the Chairman of the Joint Chiefs of Staff and the appropriate Commanders of the Combatant Commands on issues involving compliance with environmental requirements that may affect readiness and the ability to support military operations.
- f. Participate in semiannual DoD Component compliance reviews, as requested by the DUSD(ES). The reviews shall include, as a minimum, progress on the MoMs in enclosure 4.
- g. Raise emerging DoD compliance issues through the DESC, the Environment, Safety and Occupational Health Policy Board, or the DESC Compliance Committee, as established under DoD Directive 4715.1 (reference (b)).
- h. Promptly notify the DUSD(ES) of significant environmental events.
- i. Conduct internal compliance self assessments, at least annually, and external compliance self assessments, at least once every three years, at all major installations. Schedules

for other installations shall be determined by the responsibility
DoD Component.

j. Follow criteria and procedures developed by the Defense Logistics Agency for disposal of hazardous material and wastes.

3. The Director of the Defense Logistics Agency, under the Under Secretary of Defense for Acquisition and Technology, shall be responsible for developing criteria and procedures for the disposal of DoD-generated hazardous materials and wastes, in coordination with the DoD Components.

4. The Director, Defense Research and Engineering, under the Under Secretary of Defense for Acquisition and Technology, shall establish a research and development program to address compliance technology requirements that are consolidated and submitted by the DUSD(ES), and coordinate the transfer of technology to support environmental compliance requirements.

F. PROCEDURES

The Secretaries of the Military Departments and, as appropriate, the Heads of the other DoD Components shall provide the following information annually to the DUSD(ES):

1. Funding levels and full-time military and civilian personnel required and requested in order to comply with applicable environmental requirements for each military installation.
2. Examples of the effect of environmental compliance activities on operations and missions capabilities.
3. Investment levels in environmental research, development, test and evaluation.
4. Personnel duties and organizational structure for environmental programs.
5. Major environmental initiatives, milestones, and "good news stories" that show leadership.

(Under 10 U.S.C. 2706(b) (reference (1)), that information shall be compiled and submitted as part of the DoD annual report to Congress on environmental quality.)

G. INFORMATION REQUIREMENTS

1. The annual reporting requirements to Congress on DoD's environmental quality program outlined in subsection F, above, have been assigned Report Control Symbol DD-A&T(A) 1997 in accordance with DoD 8910.1-M (reference (n)). That information is required before the President's Budget submission to Congress (10 U.S.C. 2706(b) reference (1)).
2. The DoD Components' semiannual in progress reviews on their compliance status (per subsection E.2.e., above) are due in

June and December.

3. Promptly notify the DUSD(ES) of significant environmental events.

H. EFFECTIVE DATE

This Instruction is effective immediately.

Paul G. Kaminski
Under Secretary of Defense
(Acquisition and Technology)

Enclosures - 4

1. References
2. DoD Executive Agents and/or Lead Services
3. Definitions
4. MoMs

REFERENCES, continued

- (e) Title 40, Code of Federal Regulations, Part 140, "Marine Sanitation Device Standard," current edition
- (f) DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations," April 22, 1996
- (g) Joint Publication 4-04, "Joint Doctrine for Civil Engineering Support," September 26, 1995[1]
- (h) Title 15, United States Code
- (i) Title 42, United States Code
- (j) Executive Order 12344, "Naval Nuclear Propulsion Program," February 1, 1982
- (k) DoD Instruction 4715.4, "Pollution Prevention," June 18, 1996
- (l) Title 10, United States Code
- (m) DoD Instruction 4715.2, "DoD Regional Environmental Coordination," May 3, 1996
- (n) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," November 28, 1986

[1] Available on CD ROM from the Government Printing Office

LEAD AND/OR DoD EXECUTIVE AGENTS
FOR
ENVIRONMENTAL MEDIA AND SPECIALTY AREAS

A. Navy. The DoD Executive Agent for implementation of the Clean Air Act Amendments of 1990, 42 U.S.C. 7401-7671q (reference (i)), designated in February 1991.

B. Army. The DoD Executive Agent for Low Level Radioactive Waste Disposal, designated in September 1992.

C. Navy. The DoD Executive Agent for the National Response Team and/or Regional Response Team, designated in September 1992.

D. Air Force. The DoD Executive Agent for Compliance Self-Assessments, designated in 1993.

E. Army. The DoD Executive Agent for Munitions, designated in 1993.

F. Army. The DoD Executive Agent for implementation of Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992k (reference (i)), designated in 1996.

G. Navy. The DoD Executive Agent for implementation of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 (reference (d)), designated in 1996.

H. Air Force. The DoD Executive Agent for implementation of the Safe Drinking Water Act, 42 U.S.C. 300f-300j.26 (reference (i)) designated in 1996.

DEFINITIONS

1. Closed Enforcement Action. An enforcement action that is resolved by one of the following:

- a. Revocation of the action by the imposing regulator;
- b. Closure of the action following written notice by the regulator that the action is closed;
- c. Closure of the action, after a reasonable time span, following written notice to the regulator of intent to close an enforcement action; or
- d. Receipt of a signed compliance agreement or order.

2. Compliance Self Assessment. A single or multimedia inspection or evaluation of the environmental and natural and cultural resources compliance posture and overall environmental management program. The compliance self assessment does not include inspections conducted by a regulatory agency.

a. External Compliance Self Assessments. Inspections or evaluations conducted by designated person(s) from outside the installation being inspected.

b. Internal Compliance Self Assessments. Inspections or evaluations conducted by the installation personnel or their designee(s).

3. Enforcement Action. A formal, written notification by the Environmental Protection Agency or other authorized Federal, State, inter-state, regional or local environmental regulatory agency of violation of any applicable statutory or regulatory requirement. Enforcement action does not include warning letters, informal notices of deficiencies, or notices of deficiencies to permit applications. One written notice, regardless of the number of individual violations, findings, or citation listed in it, counts as one enforcement action. If the enforcement action cites violations in more than one statutory requirement, then count it as multiple enforcement actions, one under each of the applicable statutory requirement categories. Items found to be out of compliance during an internal or other DoD Component review, compliance review or audit, are not included in this definition of enforcement action.

4. Environmental Quality Status Classes. Those classes include the following designation:

a. Class 0 - Includes activities needed to cover the recurring administrative, personnel and other costs associated with managing environmental programs that are necessary to meet applicable compliance requirements (Federal, State, and local laws, regulations, E.O.s, DoD policies, and Final Governing Standards overseas) or which are in direct support of the military mission. Also, includes environmental management activities associated with the operation of facilities, installations and deployed weapon systems. Recurring costs consist of manpower, training, supplies, hazardous waste disposal, operating recycling activities, permits, fees, testing and monitoring and/or sampling and analysis, reporting and record keeping (e.g. Toxic Release Inventory reporting), maintenance of environmental equipment, and compliance self assessments.

b. Class I - Projects and activities needed that are currently out of compliance (have received an enforcement action from a duly authorized Federal, State, or local authority; have a signed compliance agreement or received a consent order; and/or have not met requirements based on applicable Federal, State, and local laws, regulations, and E.O.s, DoD policies, and Final Governing Standards overseas). This class also includes projects and activities needed that are not currently out of compliance (deadlines or requirements have been established by applicable requirements, but deadlines have not passed or requirements are not in force) but shall be if projects or activities are not implemented within the current program year. Those activities include the preparation of plans (e.g.: National Environmental Policy Act, 42 U.S.C. 4321-4370(d) (reference (i)) documentation, master plans, emergency response plans, integrated natural and

cultural resource management plans, pollution prevention plans; etc.), opportunity assessments and inventories. The preferred approach is to use pollution prevention projects or activities, if cost effective, to bring a facility into compliance. Overseas, that class includes projects and activities necessary to alleviate the human health threats to ongoing operations or necessary to comply with applicable treaties and agreements.

c. Class II - Projects and activities needed that are not currently out of compliance (deadlines or requirements have been established by applicable Federal, State, and local laws, regulations, and E.O.s, DoD policies and Final Governing Standards overseas, but deadlines have not passed or requirements are not in force) but shall be if projects or activities are not implemented in time to meet an established deadline beyond the current program year. The preferred approach is to use pollution prevention projects or activities, if cost effective, as the means of maintaining or bringing a facility into compliance. Overseas, that class includes projects and activities identified using risk based prioritization practices that meet the long term objective of full implementation of the Final Governing Standards for each foreign country where DoD maintains substantial installations.

d. Class III. Includes projects and activities that are not explicitly required by law, but are needed to address overall environmental goals and objectives.

5. Major installations. An installation identified in the current version of the DoD Base Structure Report submitted annually by the Secretary of Defense to Congress under the provisions of 10 U.S.C. 115(a) (reference (1))

6. New Enforcement Action. Any enforcement action received during the reporting period, even if both received and closed out during the period. The date of an enforcement action is considered the date of the formal written notification.

7. Open Enforcement Action. An enforcement action that has been issued but is not yet closed by one of the resolutions described under the definition of closed enforcement action. An open enforcement action is further broken down into two subcategories: pending enforcement action and unresolved enforcement action.

8. Pending Enforcement Action. An enforcement action for which the deficiency (ies) has been corrected, but remains open, pending agreement by the regulator that it is closed.

9. Significant Environmental Event. A noteworthy environmental occurrence (positive or negative) that may be of interest to or require a "timely and appropriate" response from the DUSD(ES) level, or above. Such occurrences may involve compliance with environmental statutes, criminal environmental enforcement actions, major oil and/or chemical emergencies or spills, or assessed fines and/or penalties over 1 million dollars.

10. Supplemental Environmental Projects (SEPs). Environmentally beneficial projects that an alleged violator agrees to undertake in full or partial settlement of an enforcement action, but which

the alleged violator is not otherwise legally required to perform. SEPs can play a role in securing significant environmental benefits and protection of public health and the environment.

11. Unresolved Enforcement Action. An enforcement action for which the deficiency (ies) is not yet corrected.

12. Wastewater System. Related units or devices and associated conveyances or appurtenances necessary to manage generation, collection, storage, transportation, distribution, treatment, recycling, reclamation, and disposal of domestic and industrial wastewater and storm runoff associated with industrial activity. Those treatment systems are usually required to have a National Pollutant Discharge Elimination System permit or a pretreatment permit issued by a publicly owned treatment works.

MoMs

A. MoM 1: Number of new, open, unresolved, and closed enforcement actions for applicable environmental statutes.

B. MoM 2. Compliance with the Underground Storage Tank (UST) Program as determined by the following:

1. Total number of known regulated USTs subject to the 1998 Resource Conservation and Recovery Act Subtitle I standards under 42 U.S.C. 6901-6992(k) (reference (i)).

2. Number of USTs meeting 1998 Resource Conservation and Recovery Act Subtitle I standards under 42 U.S.C. 6901-6992(k) (reference (i)).

C. MoM 3. Compliance with National Pollutant Discharge Elimination System (NPDES) permits under 33 U.S.C. 1251-1387 (reference (d)) for wastewater systems, as determined by the following:

1. Total number of NPDES permitted wastewater systems.

2. Number of wastewater systems meeting NPDES permit standards.